

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

United Shipping Services Three, Inc.	:	CIVIL ACTION
and	:	
Pacific Business Capital Corp.	:	
	:	
v.	:	
	:	
U.S. Express Lines, LTD.	:	No. 98-950

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

July 31, 2002

This action in admiralty arises from the alleged breach of several charter parties. Before this court are cross-motions for summary judgment by the two remaining plaintiffs, Pacific Business Capital Corporation ("PBCC") and United Shipping Services Three, Inc. ("USST"). For the reasons stated below, the motions will be denied.

**BACKGROUND**

Defendant United Express Lines, Ltd. ("USEL") contracted with USST, Sunrise Maritime, Inc. ("Sunrise"), Trade Shipping and Management, S.A. ("Trade Shipping"), and Haci Ismail Kaptanoglu Ship Management and Trading Co., Ltd. ("Haci"), for voyages on USEL's M/V PORER.<sup>1</sup> Each charter party required arbitration of

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<sup>1</sup>Sunrise, Trade Shipping, and Haci have all been dismissed from this action.

disputes and imposed a maritime lien if USEL failed to pay the required freight.

Sunrise, bringing this action against USEL for breach of a charter party, obtained an attachment of USEL's property held by Sedgwick of Pennsylvania and Founders Bank; Trade Shipping, USST and Haci intervened to claim funds for breach of their charter parties. The attachment was subsequently vacated.

Founders Bank, depositing \$135,000 with this court, filed an interpleader action against USST, Haci, and PBCC, a secured creditor of USEL who claims a prior Uniform Commercial Code ("UCC") Article IX lien on the same funds. That action was consolidated with this action.

Haci, USST, PBCC and USEL allegedly had entered into a settlement agreement concerning the funds in Founders Bank and their right to reimbursement by the United States Department of Agriculture. PBCC argues that, in the alleged settlement agreement, USST waived all rights to a priority lien on the Founders Bank funds now on deposit with the court. USST, disputing that interpretation of the settlement agreement, argues it has a priority lien on the funds.

This court held a hearing at which USST, PBCC, USEL and Haci were all represented by counsel. Following oral argument, the court held any established maritime lien would have priority over PBCC's security interest. The court also denied a motion for

summary judgment by USST because "a genuine issue of material fact exists as to the existence of a settlement agreement between [PBCC] and USST." The court took further motions under advisement; it ordered USST and Haci to arbitrate their claims against USEL before the Society of Maritime Arbitrators, under the terms of the charter parties. The court maintained jurisdiction over the interpleaded funds and stated that "[o]nce the parties' rights have been adjudicated in arbitration, the court will try any remaining issues." See United Shipping Servs. Three, Inc., et al. v. U.S. Express Lines, Ltd., 1998 U.S. Dist. LEXIS 17325 (E.D. Pa. November 5, 1998).

Haci violated this court's order and failed to participate in the arbitration; its claim was dismissed for lack of prosecution. The arbitrator awarded USST \$638,058.79, \$373,875.40 of which the arbitrator found to be a maritime lien of USST<sup>2</sup> on the interpleaded funds. On June 22, 2001, this court granted USST's motion to confirm the arbitration award as to USST and USEL only.

PBCC was not a party to the arbitration: the arbitrator's

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<sup>2</sup>The arbitrator stated he considered USST's additional liens to arise by contract, not maritime law, so the liens were not maritime liens. PBCC, arguing none of USST's liens are established maritime liens against the funds in the registry of the court, supports its claim to a prioritized UCC lien with affidavits. USST argues it has a valid maritime lien taking priority over PBCC's security interest in the interpleaded funds.

finding of USST's maritime lien is not binding on PBCC.<sup>3</sup> The arbitrator did not purport to rule on PBCC's claimed UCC lien or its priority. This court must now resolve whether USST's claimed maritime lien has priority over PBCC's claim to the interpleaded funds and, if so, whether USST waived the priority of its lien by a settlement agreement with PBCC. PBCC and USST each move for summary judgment and an award of the interpleaded funds.

### DISCUSSION

Summary judgment is appropriate if there are no genuine issues of material fact and the evidence establishes that the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A defendant moving for summary judgment bears the initial burden of demonstrating that there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue of material fact. See id. at 322-24. The non-movant must present evidence to support each element of its case for which it bears the burden at trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986). A genuine issue of material fact exists when "the

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<sup>3</sup>During a hearing on September 23, 1998, this court suggested that PBCC participate in the arbitration for the sake of judicial economy, but PBCC did not do so.

evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The court must draw all justifiable inferences in the non-movant's favor. See id. at 255.

If USST has a valid maritime lien against the interpleaded funds, the lien will have priority over PBCC's security interest perfected under UCC Art. 9. See United Shipping Servs. Three, 1998 U.S. Dist. LEXIS 17325 ("Any established maritime lien will have priority over PBCC's security interest"), citing The J.E. RUMBELL, 148 U.S. 1 (1893) (maritime lien had priority in admiralty over a mortgage encumbering a ship). But, if USST waived any claim on the funds by settlement, PBCC is entitled to realize its security interest under the UCC.

PBCC, filing affidavits and a declaration, argues that USST has no valid maritime lien on the interpleaded funds. USST, filing counter-affidavits, argues that it does have a valid maritime lien on the funds. This conflicting evidence creates a genuine issue of material fact precluding summary judgment. There is also a genuine issue of material fact regarding the existence of a settlement agreement waiving USST's claim to the interpleaded funds.

Before the interpleaded funds are awarded to either USST or PBCC, it must be determined whether USST has a valid maritime lien against the funds that takes priority over PBCC's security

interest under the UCC and, if so, whether USST has waived its claim to the funds by a settlement agreement. These disputed issues of material fact preclude summary judgment.

### **CONCLUSION**

For the foregoing reasons, the motions for summary judgment will be denied. A non-jury trial will be held to resolve the remaining issues.

An appropriate order follows.

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U.S. Express Lines, LTD.	:	No. 98-950

ORDER

AND NOW, this 31<sup>st</sup> day of July, 2002, it is hereby  
**ORDERED** that:

1. Pacific Business Capital Corporation's Motion for  
Summary Judgment [DE#71] is **DENIED**.

2. United Shipping Services Three's Motion for Summary  
Judgment [DE#94] is **DENIED**.

3. A non-jury trial will be held to resolve the  
outstanding disputed issues in this action.

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Norma L. Shapiro, S.J.